

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ESTELLA MAGANA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 248,250 & 248,251
<b>ALLIED SIGNAL</b>	)	
<b>SPECTRA LUX</b>	)	
Respondents	)	
AND	)	
	)	
<b>ZURICH INSURANCE COMPANY</b>	)	
<b>FEDERAL INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent, Spectra Lux, appealed Administrative Law Judge Robert H. Foerschler's May 18, 2000, Preliminary Decision.

**ISSUES**

Claimant alleges she suffers from an occupational disease that arose out of and in the course of her employment. In Docket No. 248,250, claimant alleges she suffers from a respiratory disease caused by exposure to certain chemical fumes while employed by Allied Signal (Allied) through her last day worked of July 13, 1998. In Docket No. 248,251, claimant alleges she suffers from a respiratory disease caused by exposure to certain chemical fumes while employed by Spectra Lux (Spectra) through her last day worked of August 20, 1999.

The Administrative Law Judge granted claimant's preliminary benefit request for medical treatment, finding that claimant had proved her asthmatic bronchitis condition was a result of her prolonged exposure to chemical fumes during her past 23 years of employment. The Administrative Law Judge further found that liability for providing claimant with medical treatment for her respiratory condition was with respondent, Spectra, the last employment where claimant was exposed to the offending chemical fumes.

On appeal, Spectra contends the Administrative Law Judge's Preliminary Decision should be reversed. Spectra argues that claimant failed to prove her limited exposure to chemical fumes while employed by Spectra was the cause of her current respiratory problems.

In contrast, claimant contends she established, through her testimony and the medical evidence admitted into the preliminary hearing, that her respiratory condition is a result of exposure to chemical fumes at work. And since her last exposure occurred while she was employed by the respondent, Spectra, then Spectra is the employer responsible for providing claimant with workers compensation benefits.<sup>1</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record, the Appeals Board finds that the Administrative Law Judge's Preliminary Decision should be affirmed.

Claimant was employed by Allied from May 24, 1976, until July 13, 1998. At that time, Allied sold the division where claimant was employed to Spectra. Claimant was then transferred to Spectra. Her job duties at Spectra did not materially change from the duties she was performing at Allied except for the time claimant spent on some of the individual job duties.

Claimant worked as a decorator for both Allied and Spectra. Her job duties as a decorator were to paint and assemble plastic radio panels for airplanes. This required claimant to paint, photo etch, solder, and assemble the plastic radio panels. While performing these job duties, claimant worked in an environment that exposed her to chemical fumes emitting from the paint, thinners, acetones, and solder.

Claimant testified that commencing sometime in 1994 she began to have shortness of breathe, coughing, and sometimes she became nauseated because of her exposure to these chemical fumes at work. The first time claimant sought medical treatment for her respiratory problem was on August 5, 1994, while employed by Allied. Claimant testified on numerous other occasions since 1994 she has suffered frequent episodes of shortness of breathe and coughing from exposure to these chemical fumes. Claimant testified she again had to seek treatment in the emergency room of a local hospital on June 25, 1999, because of these same symptoms. Claimant had another episode that occurred on July 16, 1999, that required her to seek treatment at the hospital. She experienced the same symptoms, and at that time, her family physician, Luis H. Robles, M.D., admitted her to the hospital for additional testing and treatment.

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<sup>1</sup>See K.S.A. 44-5a06.

After the July 16, 1999, hospitalization, claimant returned to work on August 20, 1999. The work claimant returned to on August 20, 1999, was assembly work that did not require her to paint. But the assembly work that day did require her to solder. Because of the solder fumes, claimant again began to have an episode of coughing. After August 20, 1999, claimant resigned her employment with Spectra at the suggestion of Dr. Robles who recommended that claimant find work in some other occupation because of her more frequent respiratory problems.

Claimant testified she notified her supervisor, Don Barkley, that the exposure to the chemical fumes at work was causing her respiratory problems. Mr. Barkley also testified he knew claimant was having respiratory problems as the result of her exposure to the chemical fumes.

At claimant's attorney's request on December 16, 1999, she was examined and evaluated by Thomas A. Beller, M.D., associated with the Kansas City Pulmonary Clinic, P.A., in Kansas City, Missouri. Dr. Beller's medical report of the results of his examination and evaluation of claimant was introduced into the preliminary hearing record. After taking a history from claimant, performing a physical examination, reviewing claimant's previous medical treatment records, conducting pulmonary functional studies, and taking x-rays of claimant's chest, Dr. Beller diagnosed claimant with asthmatic bronchitis, interstitial lung disease, and respiratory insufficiency. The doctor concluded that claimant's asthmatic bronchitis was related to her exposure to chemical fumes at work which he believed likely resulted in occupational induced asthma and asthmatic bronchitis. He suspected this prolonged exposure resulted in her becoming sensitized and developing the asthmatic condition.

Because claimant worked for Allied longer than for Spectra, the Appeals Board agrees the preliminary hearing record, over all, does establish the claimant's exposure to the chemical fumes was much more extensive while employed by Allied. But the occupational disease statute is clear that the employer who employed the claimant in last injurious exposure to the hazard of the disease, and its insurance carrier, if any, are liable for the payment of benefits without the right to contribution by any previous employers.<sup>2</sup>

The Appeals Board concludes, based on claimant's testimony and the medical evidence introduced at the preliminary hearing, at this point in the proceedings, claimant has established that her respiratory problems are related to her employment with the respondent Spectra. Spectra, therefore, is responsible to provide claimant with medical treatment for her respiratory condition.

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<sup>2</sup>See K.S.A. 44-5a06.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Robert H. Foerschler's May 18, 2000, Preliminary Decision, should be, and it is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS  
Michael J. Joshi, Kansas City, MO  
Kristine A. Purvis, Kansas City, MO  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director